IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3800 of 2006
Date of Decision: 4.12.2006

Harasvinder Singh and another ...Appellants

Versus

Gurmit Singh ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sarbjit Singh Hira, Advocate, for the appellants.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for mandatory injunction for directing the defendants to remove the encroachments made by them in the form of brick wall 2 feet high Khudda, plantation of popular trees etc. was decreed.

It has been found that Khasra No. 127 is a public passage and on that passage obstructions have been caused by the defendants. Since, such land has been found to be encroached upon by the defendants, therefore, the plaintiff was granted decree for mandatory injunction.

To return such finding the Courts below have relied upon the statement of defendant-Iqbal Singh, which is to the effect that Aks-Shajra was correctly prepared by the Patwari and that there was a passage from east to west which was two karams wide. It was further found that on reading of the said testimony with the statements of plaintiff-Gurmit Singh, who appeared as PW1, PW3-Bakhshish Singh, draftsman and certified

copies of jamabandi and Aks-Shajra, it could be safely concluded that Khasra No. 127 is a passage in between Khasra No. 132 on the southern side. On the basis of the report of the Local Commissioner, who has prepared the demarcation report Exhibit P.4, it was found that the plaintiff has been able to positively show the existence of the passage comprising of Khasra No. 127 on the eastern as well as northern sides of the land of the plaintiff and the same has been encroached upon by the defendants.

The said finding has been recorded by the Courts below on appreciation of evidence. It could not be point out that any evidence has been misread or not taken into consideration while returning such finding of fact. Concurrent findings of fact are sought to be disputed by way re-appreciation of evidence.

I do not find that such findings suffer from any patent illegality or irregularity, which may give rise to a substantial question of law in the present second appeal.

Hence, the present appeal is dismissed in limine.

04-12-2006 (HEMANT GUPTA)
ds JUDGE